



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 6, 1996

Mr. Gary Smith
City Attorney
City of Greenville
P.O. Box 1049
Greenville, Texas 75403-1049

OR96-2046

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101964.

The City of Greenville (the "city") received a request for information in which the requestor asked for:

1. The starting salary and each salary increase, date of each salary increase and justification therefor [sic] for the following employees . . .
2. All expenditures of public funds on the Suburban driven by the City Manager since the date it was leased to the City Manager.
3. Evaluation summaries for 1996 for the City Manager, City Attorney, City Secretary and Municipal Judge . . . all e-mail from the City internal network and from the internet, from and to Lori Philyaw.

However, the city seeks to withhold portions of the requested information based on sections 552.101 and 552.117 of the Government Code and you enclosed marked representative samples of the information the city seeks to withhold.¹ Since the exceptions you raise

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos.

(continued...)

you raise pertain only to personnel and payroll authorization forms, we assume that you have released the remaining information, if it exists², to the requestor.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Accordingly, a social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii). In relevant part, the 1990 amendments to the federal Social Security Act make confidential social security account numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We caution, however, that an employer may be required to obtain an employee's social security number under laws that predate October 1, 1990; a social security number obtained under a law that predates October 1, 1990, is not made confidential by the 1990 amendments to the Social Security Act. Based on the information contained in Exhibit B, the social security numbers contained in the submitted documents are confidential under federal law but we note, however, that hiring an individual after October 1, 1990, is not the same as obtaining an individual's social security number pursuant to a law enacted on or after October 1, 1990. On the other hand, section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing *any* social security number, you should ensure that it was not obtained pursuant to a law enacted on or after October 1, 1990.

We observe that information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note the presence of financial information in the personnel and payroll authorization forms. This office has determined that some personal financial information is highly intimate or embarrassing and thus it meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 545 (1990), 523 (1989). However, information concerning financial

¹(...continued)

499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office

²Although the Open Records Act is inapplicable to documents which are records of the judiciary as set out in section 552.003(b), an evaluation of a municipal court judge would fall within those records of the city council and place it within the Open Records Act. *cf.* Open Records Decision Nos. 188 (1978), 236 (1980).

transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, financial information relating to retirement benefits must be disclosed if it reflects the employee's mandatory contributions to the state retirement system. Open Records Decision No. 600 (1992). On the other hand, information is excepted from disclosure if it relates to a voluntary investment that the employee made in an option benefits plan offered by the city or state. *Id.* It is not apparent from the notations made on some forms as to whether the retirement is mandatory or voluntary and we would caution you to evaluate the data before releasing. *See* Gov't Code § 552.352.

Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires you to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. You indicate that the six employees made a request for confidentiality under section 552.024 before the time this request for the documents was made so the information may be withheld and you have submitted the relevant documentation. We agree that you may withhold the employees' social security numbers, home addresses, home telephone numbers and family member information.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', with a stylized, somewhat abstract shape.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 101964

Enclosures: Marked documents

cc: Ms. Barbara Garrett
P.O. Box 1787
Greenville, Texas 75403-1787
(w/o enclosures)